

Estate Planning, Fiduciary Rules, Asset Protection and Gun Trusts

**Presentation to the Utah Attorney General's Office
November 7, 2013**

Today's Topics

1. Fiduciary Roles
2. Estate Planning
3. Asset Protection
4. Gun Trusts

I. Fiduciary Roles

Fiduciary Roles

| <u>Entity</u> | <u>Creator</u> | <u>Legal Title</u> | <u>Beneficial Interest</u> |
|-------------------|-------------------|-------------------------|----------------------------|
| Estate | Testator/Decedent | Personal Representative | Devises/Heirs |
| Revocable Trust | Settlor | Trustee | Settlor |
| Irrevocable Trust | Settlor | Trustee | Beneficiaries |
| Conservatorship | Conservatee | Conservator | Conservatee |
| Power of Attorney | Principal | Agent | Principal |

Fiduciary Roles

Who has the authority?

What do they have the authority to do?

Read the governing instrument.

II. Estate Planning

Elements of a Basic Estate Plan

- Revocable Trust (joint or separate)
- Pour-over Will (for each spouse)
- Power-of-Attorney (for each spouse)
- Health Care Directive (for each spouse)

Intestate Distribution

- Surviving Spouse's Share
 - Everything if . . .
 - \$75,000, plus $\frac{1}{2}$ of balance if. . .
 - Adjustment for non-probate transfers.

- Balance to Children
 - If no children, to parents
 - If no parents, to siblings
 - Etc.

Purposes of a Revocable Trust

- Avoid Probate
- Avoid Conservatorship
- How?

Post-Mortem Administration of a Revocable Trust

- Marshal Assets
- Inventory
- Notice to Beneficiaries
- Notice to Creditors
- Pay Taxes
- Distribute Assets

Revocable Trust as Will Substitute

- Tangible Personal Property
- Dollar Gifts
- Residue
- Outright Gifts / Gifts in Trust

What Revocable Trusts do NOT do

- No income tax savings
- No estate tax savings
- No asset protection

How to Fund a Revocable Trust

- Real Property
- Accounts
- LLC interests
- General Assignment
- NOT retirement plan

Funding a Revocable Trust

Julie Valdes, trustee of the
Julie Valdes Revocable Trust
dated November 7, 2013

Selection of Trustees

- During Lifetime
- After Death
- Designate back-up trustees
- Make fiduciaries consistent across all financial instruments

Tips on Dispositive Provisions

- What if beneficiary predeceases you?
- Encumbered property
- Special Needs
- Loans/Advances
- No Contest Clause

Pour-Over Wills

- Always accompany revocable trusts
- For property that isn't in revocable trust at death
- One dispositive provision

Other Ways to Avoid Probate

- Joint Tenancy
 - real property
 - accounts
- Beneficiary Designations
 - life insurance
 - retirement plans
 - POD accounts
- Be Careful
- Small Estate Affidavit

Powers-of-Attorney

- Always accompany revocable trusts
- For property that isn't in revocable trust upon incapacity

Fiduciaries

- Make trustees, executors and financial agents consistent.

How Often Update Estate Plan?

- Change in family
- Change in assets
- Every 5 years

Retirement Plans

- Who to name as beneficiary?
 - Spouse good
 - Trust bad

Estate Tax

- \$5.25 million exemption
- If under \$5 million,
- If \$5-10 million,
- If over \$10 million,

III. Asset Protection

Asset Protection

- LLCs
- Trusts

Utah's New Asset Protection Trust Law

- Settlor is beneficiary
- Settlor can be co-trustee (not sole trustee)
- Protected from future voluntary creditors

Asset Protection

What protection already exists?

- Liability Insurance
- Retirement Plans
- Life Insurance

IV. Gun Trusts

Gun Trusts

- Facilitates purchase
- Facilitates use by others
- Facilitates transfer on death

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